

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GROSSBERG FIDUCIARIES LIMITED,

Plaintiff,

vs.

ZALMAN SILBER,

Defendant.

COMPLAINT

19-cv- 9952

Plaintiff Grossberg Fiduciaries Limited by its attorneys Golenbock Eiseman Assor Bell & Peskoe LLP, for its complaint against defendant Zalman Silber, alleges as follows:

A. THE PARTIES, JURISDICTION, AND VENUE

1. This is a complaint for no less than \$4,885,515 to date due on a loan and a guaranty of that loan and payment of certain fees and expenses in connection with preparing the agreement with respect to the loan and guaranty.

2. Plaintiff Grossberg Fiduciaries Limited (“**Grossberg Fiduciaries**”) is a private limited company organized under the laws of the Republic of Seychelles.

3. Upon information and belief, defendant Zalman Silber (“**Silber**”) is a citizen of the State of New York residing at 12 Miriam Lane, Monsey, New York 10951, with his principal place of business at 400 Rella Boulevard, Suite 301, Suffern, New York 10951.

4. Galactic Litigation Partners LLC (“**Galactic**”) is a limited liability company organized under the laws of the State of Delaware. On information and belief, its principal place of business is at 400 Rella Boulevard, Suite 301, Suffern, New York 10951.

5. PAR Managers LLC (“**PAR**”) is a limited liability company organized under the laws of the State of Delaware. On information and belief, its principal place of business is at 400 Rella Boulevard, Suite 301, Suffern, New York 10951.

6. The amount in controversy herein, exclusive of interest and costs, exceeds \$75,000.00. Jurisdiction of this action is founded upon the diversity of citizenship between plaintiff and defendant pursuant to 28 U.S.C. § 1332 (a).

7. Pursuant to 28 U.S.C. §1391(b) and (c), venue lies in the Southern District of New York because the defendant resides in the State of New York and is subject to the personal jurisdiction of this Court.

B. FACTS

8. On or about November 22, 2018, plaintiff Grossberg Fiduciaries and Galactic and PAR entered into a convertible term loan facility agreement (the “**Facility Agreement**”), pursuant to which Grossberg Fiduciaries agreed to loan Galactic \$4,000,000 with interest as provided (the “**Loan**”), and Galactic and PAR jointly and severally agreed to repay the Loan, plus interest and any and all other sums due in full on the Reypayment Date (defined below).

9. Section 4 of the Facility Agreement provides that in consideration of the payment of \$300,000, Grossberg Fiduciaries received a conversion option (the “**Conversion Option**”) to convert the Loan into certain economic interests, with the Conversion Option to be exercised prior to July 24, 2019 (the “**Repayment Date**”), and that if Grossberg Fiduciaries did not exercise the Conversion Option, Galactic and PAR would repay the Loan and the interest on the Repayment Date.

10. The Facility Agreement provided that interest would accrue on the Loan at the rate of 25% per annum up to and including the Repayment Date, less \$300,000, and would be repaid on the Repayment Date, and that if the Loan plus interest were not repaid in full by September 24, 2019, interest would accrue daily from September 24, 2019, to date of actual payment at the rate of 27% per annum. All interest due is hereinafter referred to as “**Interest**.”

11. Upon information and belief, Silber is a principal of, or a shadow principal behind, Galactic. On or about November 22, 2018, Grossberg Fiduciaries and Silber entered into a Deed of Guaranty (“**Guaranty**”) pursuant to which Silber directly, irrevocably, and unconditionally

guaranteed to Grossberg Fiduciaries repayment of the Loan and the Interest and any and all other amounts due under the Facility Agreement and any other agreements entered into pursuant to the Facility Agreement, and waived any requirement that Grossberg Fiduciaries proceed first against anyone else before enforcing its rights against Silber under the Guaranty.

12. On November 26, 2018, Grossberg Fiduciaries transferred \$4,000,000 to Galactic (**“First Tranche”**).

13. On February 14, 2019, Grossberg Fiduciaries, Galactic, and PAR entered into a Facility Agreement Amendment Letter, to amend the Facility Agreement insofar as Grossberg Fiduciaries agreed to loan an additional \$200,000 to Galactic, the total Loan amount would be \$4,200,000, and Galactic and PAR agreed to repay \$4,200,000 plus Interest on the Repayment Date.

14. On February 14, 2019, Grossberg Fiduciaries and Silber executed a Consent Letter, pursuant to which Silber agreed that the Guaranty would apply with full force and effect to the Facility Agreement Amendment Letter and to the additional amount of \$200,000 by which the Loan increased.

15. On February 15, 2019, Grossberg Fiduciaries transferred \$200,000 to Galactic (**“Second Tranche”**).

16. As a result of the foregoing, Grossberg Fiduciaries loaned \$4,200,000 to Galactic, and Galactic and PAR agreed to repay \$4,200,000 plus Interest, less \$300,000.

17. By letter of July 11, 2019, to Galactic, PAR, and Silber, Grossberg Fiduciaries requested repayment of the Loan and the Interest by the Repayment Date if the Conversion Notice were not served by the Repayment Date.

18. Grossberg Fiduciaries did not serve the Conversion Notice at or before the Repayment Date, and the Loan became due for immediate repayment on the Repayment Date.

19. As of September 12, 2019, Grossberg Fiduciaries had not received any payments toward the Loan or the Interest, and by letter dated September 12, 2019, to Galactic and PAR,

Grossberg Fiduciaries declared an event of default (“**Default**”) and demanded full and immediate repayment of the Loan plus Interest and all amounts outstanding under the Facility Agreement and the Facility Agreement Amendment Letter.

20. By letter dated September 19, 2019, Grossberg Fiduciaries notified Silber of the Default and demanded payment from Silber of \$4,743,287.67 pursuant to the Deed of Guarantee, including \$4,200,000 of the Loan and accrued Interest less \$300,000, equal to \$543,287.67. The Interest equaled (i) interest through September 19, 2019, of \$813,698.63 on the First Tranche at a rate of 25% per annum; plus (ii) interest through September 19, 2019, of \$29,589.04 on the Second Tranche at a rate of 25% per annum.

21. Neither Galactic, PAR, nor Silber have paid any amounts due on the Loan or the Interest.

22. Section 8.1 of the Facility Agreement required Galactic and Grossberg to each pay 50% of the costs and expenses in connection with the negotiation and preparation and execution of the Facility Agreement. Grossberg Fiduciaries paid 34,435.50 (UK pounds) for these expenses and Galactic and PAR have not reimbursed Grossberg Fiduciaries for any portion of this amount. As a result of the foregoing, Grossberg Fiduciaries has been damaged and is entitled to recover from Silber 50% of this amount, which is 17,217.75 (UK pounds).

23. The Facility Agreement and the Guaranty are governed by English law and permit Grossberg Fiduciaries to commence legal action against Silber in a court of competent jurisdiction.

CLAIM FOR RELIEF

24. Plaintiff repeats and realleges the allegations contained in the foregoing paragraphs as if set forth herein in full.

25. As a result of the foregoing, plaintiff Grossberg Fiduciaries has been damaged and is entitled to recover from defendant Silber (i) \$4,200,000 of the Loan; (ii) Interest as follows: (a) \$857,671.23 through September 24, 2019, less \$300,000; and (b) daily interest of \$3,106.85 from

September 24, 2019, through date of payment; (iii) fee and expense reimbursement of 17,217.75 (UK pounds); and (iv) other legal fees and costs that are provided by the Guaranty and at law.

WHEREFORE, plaintiff Grossberg Fiduciaries Limited requests judgment against defendant Zalman Silber as follows:

- A. on its claim for relief for damages in an amount no less than (i) \$4,200,000 of the Loan; (ii) Interest as follows; (a) \$857,671.23 through September 24, 2019, less \$300,000; and (b) daily interest of \$3,106.85 from September 24, 2019, through date of payment; (iii) fee and expense reimbursement of 17,217.75 (UK pounds); and (iv) other legal fees and costs that are provided by the Facility Agreement and at law; and
- B. attorneys' fees, prejudgment interest, the costs of this action and for such other and further relief as is just and proper.

Dated: New York, New York
October 28, 2019

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